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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,022	11/19/2003	Eric C. Humphries	102492-100	8840

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WIGGIN AND DANA LLP
ATTENTION: PATENT DOCKETING
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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,022

Applicant(s)

HUMPHRIES ET AL.

Examiner

Raymond W. Addie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

The Application is objected to for not providing proper antecedent basis for specific claim language.

Although the specification states the National Cooperative Highway Research Program Report 350 Test level 3/4", exists and includes 6 levels; the specification does not disclose what is necessary to qualify under each or any of the test levels.

Therefore, the specification does not provide proper antecedent basis for claims 12, 14, 24, 26, 40.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 12, 14, 24, 26, 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The cited claims recite "wherein the longitudinal barrier is qualified under National Cooperative Highway Research Program Report 350 Test level 3/4", respectively.

However, although the specification states the such a report exists and includes 6 levels; the specification does not disclose what is necessary to qualify under each or any of the test levels.

The fact that the Applicant has cited the report in an IDS, does not constitute an actual disclosure within the originally filed specification.

Hence, the claims are requiring a limitation that is not defined by the specification in such a way as to enable one skilled in the art, would be able to make the claimed invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9, 15-18, 22, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Salviam-Brun # FR2,457,928.

Salviam-Brun discloses a traffic noise barrier for use alongside a roadway. The barrier comprising:

A longitudinal barrier (14, 40) having a front, top and back surface.

A traffic noise barrier wall (50) supported by the weight of the longitudinal barrier (40) against lateral earth pressures (45) and traffic loads.

Said traffic noise barrier (50) being spaced apart from the back surface of the barrier (40), via a plurality of transverse beams (42, 44).

Said barrier (50) further comprising: A plurality of upstanding posts (54, 56, 58) and a plurality of panes (50, 52).

Said traffic noise barrier further comprising structure (48) disposed across the plurality of transverse beams, being capable of catching debris falling between the longitudinal barrier and the traffic noise barrier wall (50). See Fig. 2; translated abstract.

In regards to Claims 9, 22 Salviam-Brun discloses the upstanding posts are interconnected by a bar (unnumbered, the bar extends along the top of the transverse beam (42), and the post and panels (50-58) as shown in Fig. 2.

In regards to Claims 15, 16, 29 Salviam-Brun illustrates the upstanding posts are configured to break, in the event a vehicle should impact said posts; and that the traffic noise barrier wall (50) is entirely supported against lateral movement by said longitudinal barrier (40). See Fig. 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR2,457,928 in view of Coburn # 4,643,271.

Salviam-Brun discloses a traffic noise barrier having structure (48) capable of catching debris falling between the barrier (40) and the barrier wall (50); but does not disclose the structure (48) as comprising a grating plate formed of rigid material.

However, Coburn teaches that sound absorbing gabions (1) comprising a wire cage (3) filled with sound absorbing and ballast material (5, 7) are advantageously disposed adjacent roadways (R), to provide safety for vehicles, in an aesthetically pleasing manner. See Cols. 2-3; Figs. 3-5.

5. Claims 11, 13, 23, 25, 30, 31, 36, 37, 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Sullivan # 5,443,324.

Salviam-Brun discloses a traffic noise barrier system for use along roadways, such that the front face of the barrier (40) is configured, with slanted face portions for redirecting errant vehicle back toward the roadway; although illustrated, Salviam-Brun does not

disclose the spacing between the barrier (40) and the barrier wall (50). However, Sullivan discloses concrete "jersey-style" barriers are commonly 54" tall. Hence, it would be obvious from Fig. 2 of Salviam-Brun, that the barrier wall (50) is illustrated to be at least 34" from a front vertical plane of the front face of the barrier (40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to space the barrier wall of Salviam-Brun at least 34" from the front face of the barrier (40), as reasonably suggested by Salviam-Brun, in order to provide sufficient ballast or garden material between said barriers (40, 50). See fig. 2.

6. Claims 6, 10, 19, 27, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Thommen, Jr. # 5,961,099. Salviam-Brun discloses a traffic noise barrier having structure (48) capable of catching debris falling between the barrier (40) and the barrier wall (50); but does not disclose the use of a cable catch system.

However, Thommen, Jr. teaches it is advantageous to provide safety net systems for debris and mud slides along roadways; said safety system comprising:

A plurality of panels (23), interconnected to a plurality of upstanding posts (25) configured to break when impacted by a vehicle; and a cable a tubular bar assembly (44, 51), respectively. Said segmented tubular bar (51) including a plurality of segments (51) disposed along the cable (44), and being separated by a plurality of

expansion joints (58). Said safety net assembly providing means for accommodating heavy load, mud and debris slides; as reasonably suggested by Thommen, Jr. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Salviam-Brun with a load-bearing cable and tube assembly, of Thommen, Jr., in order to accommodate heavy load, mud and debris slides See col. 1, Ins. 1-30; col. 2, ln. 16-col. 4, ln. 63.

7. Claims 34, 35, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Sullivan # 5,443,324, as applied to claims 30, 37 above, and further in view of Thommen, Jr. # 5,961,099.

Salviam-Brun in view of Sullivan disclose a traffic noise barrier having structure (48) capable of catching debris falling between the barrier (40) and the barrier wall (50); but does not disclose the use of a cable catch system.

However, Thommen, Jr. teaches it is advantageous to provide safety net systems for debris and mud slides along roadways; said safety system comprising:

A plurality of panels (23), interconnected to a plurality of upstanding posts (25)

configured to break when impacted by a vehicle; and a cable a tubular bar assembly (44, 51), respectively. Said segmented tubular bar (51) including a plurality of segments (51) disposed along the cable (44), and being separated by a plurality of

expansion joints (58). Said safety net assembly providing means for accommodating heavy load, mud and debris slides; as reasonably suggested by

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Thommen, Jr. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Salviam-Brun in view of Sullivan with a load-bearing cable and tube assembly, of Thommen, Jr., in order to accommodate heavy load, mud and debris slides See col. 1, Ins. 1-30; col. 2, In. 16-col. 4, In. 63.

8. Claims 7, 8, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Shima et al. # 6,006,858.

Salviam-Brun disclose a traffic noise barrier comprising a barrier wall panels (50, 52) interconnected by upstanding posts (54, 56) but does not disclose what the panels (50, 52) are made from. However, Shima et al. teaches that noise control barriers are advantageously made from glass wool fibers, which are obviously transparent. See col. 3, Ins. 1-21. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the noise control barrier of Salviam-Brun, with sound diffracting panels, as taught by Shima et al., in order to reduce traffic noise as much as possible.

9. Claims 32, 33, 38, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Sullivan # 5,443,324 as applied to claims 30, 37 above, and further in view of Shima et al. # 6,006,858.

Salviam-Brun in view of Sullivan disclose a traffic noise barrier comprising a barrier wall

panels (50, 52) interconnected by upstanding posts (54, 56) but does not disclose what the panels (50, 52) are made from. However, Shima et al. teaches that noise control barriers are advantageously made from glass wool fibers, which are obviously transparent. See col. 3, Ins. 1-21. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the noise control barrier of Salviam-Brun in view of Sullivan, with sound diffracting panels, as taught by Shima et al., in order to reduce traffic noise as much as possible.

10. Claims 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of NPL document Guidelines Bridge Rails and Median Barriers dated 2/26/2003, reference to Keller et al.

Salviam-Brun discloses a longitudinal barrier (40) in the form of a concrete "jersey barrier" but does not disclose whether or not it qualifies under NCHRP 350 test level 3 or 4. However, Keller et al. teaches in Table 2, that concrete "New Jersey Safety Shape Bridge rails having a 32" width qualify as TL-3; and that concrete barriers with vertical faces qualify as TL-4. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the longitudinal jersey barriers of Salviam-Brun would qualify as TL-3 or 4.

11. Claims 24, 25, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salviam-Brun # FR 2,457,928 in view of Sullivan # 5,443,324, as applied to claims 23, 37 above, and further in view of NPL document Guidelines Bridge Rails and Median Barriers dated 2/26/2003, reference to Keller et al.

Salviam-Brun in view of Sullivan disclose a traffic noise barrier having structure (48) capable of catching debris falling between the barrier (40) and the barrier wall (50); but does not disclose whether or not it qualifies under NCHRP 350 test level 3 or 4.

However, Keller et al. teaches in Table 2, that concrete "New Jersey Safety Shape Bridge rails having a 32" width qualify as TL-3; and that concrete barriers with vertical faces qualify as TL-4. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made that the longitudinal jersey barriers of Salviam-Brun in view of Sullivan would qualify as TL-3 or 4.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rerup et al. # 5,406,039 discloses an acoustical barrier for roadways. Schmitt # 5,074,705 discloses a highway divider. Lee et al. # 4,685,656 discloses a safety fence. Case # 3,388,892 discloses a guardrail system. Popp et al. # 5,207,302 discloses a shock absorbing cable assembly for retaining rock and snow slides. Thommen, Jr. # 5,524,875 discloses a safety net system for roadways.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raymond Addie
Patent Examiner
Group 3600

1/10/2005